App. F. IX-4

Previous References
Law 41.30-1-4

1930.31
(Law)

File No. 41.30
Serial Nos. 5-6

Later References

48

General and Revenue Secretariat.

Serial Nos.

Part B for July 1932.

SUBJECT.

Bill for Rs 50/- of Mr PPr. Mysore being his remuneration for professional services rendered in O.S. 4/1879 on the file of Mr Dist. Judge, Mysore (re. Marimallappa's Charities)

The D.P.I.
Compr.

No. P 6006-7 of 18.4.32.
Sanctions.

Mr. Asmal Azeez
30.7.32

Serial No.

Flag 'V'

Letter No. 3065 dated 30.11.31 from the Hon. Registrar enclosing a copy of the * Statement of objections filed by the D.A.G and informing that the case is posted for argument to 13.11.31.

2) It is reported that the Judge has called for proceedings of the Committee and a report on the attitude of the Committee as a whole with regard to the order in question.

Subs for perusal

TSD 4/11

20/11

Sus B

MM 4/11

PPr's report dt 14.11.31

Adjd at the request of Mr. J.C. Rollo to 28.11.31

for Perusal

TSD 17/11

MM 17.11.31

PPr's report dt. 28.11.31

adjourned to 12.12.31 for arguments

for Perusal.

TSD 1/12

Sus B

MM 1/12

P. Pr Report of 12/12

Judge on casual leave

Hence adjd to 19.12.31

Subs for perusal

Sus

MM 16/12

16/12

NOTE—Contn. Sheet.

2

1713

File No. of 193 . General and Revenue Secretariat

Progress report dated 20-12-31

Adjourned for want of time 22-12-31.

For Perusal.

TSD
DM 22/12 Sub

PPr's report dated 23-12-31

Arguments heard

For orders 4-1-32.

For perusal

TSD
DM 28/12 Sub B

Extract from the PPr's report d 4-1-32 (Report in Music Procedure file)

orders passed upholding the resolution of the Board and granting pensions to the retired teachers of the School (Copy of the order will be obtained and subd)

Copy of the order may be awaited

Subd for perusal.

TSD
7/1

This is regarding the diversion of funds of the Marimallappa's charities from scholarships to pensions. The Dk proposal of the Board of Trustees, permitted the diversion in his order of 1st August 1930. Since this was passed without notice to Govt and which was against one of the conditions laid

Hon. B'

1775

App. F. III—2]

General and Revenue Secretariat | File No. | of 193

Serial No.

in Govt order of 14th April 1926, under which post took over the management of the Institution, a revision petition was filed by the D.P.I on behalf of post in the High Court. On revision, the Dt Jud's order was cancelled & he was directed to dispose of the matter after notice to Govt and "in the light of the observations" contained in the High Ct's order.

'C' (order of High Ct dated 7.8.31)

4) On remand, the D.P.I appeared in the case & it is now reported that the District Judge has practically upheld his previous order permitting the grant of pensions.

5) Submitted for perusal. As soon as the copy of the order now passed is received, the question as to what further action is necessary will be worked up & submitted for orders.

Chief Secy)

MM 7.1.32

CHIEF SECRETARY 7 JAN. 1932

OFFICE OF THE SECRETARY TO COUNCIL 9 JAN. 1932 No. 5538

1) Legal Member) 8/1/32

MM 8/1

2) GR Tie 9.1.32

NEW 9/1/32

NOTE.—Contd. Sheet.

TYPING SECTION 11 JAN. 1932 GENL. & REV. SECTT.

WD 02553—G P B—50,000—8-7-30

3) Please put the copy early MM 9.1

9) Dft. put up. ISD 9/1

10) Issue & resubmit MM 11.1

Issued no. P. 3855/d

O.S. 4 / 1879 on the file of the Dist. Judge Mysore (re: Gurika Marimallappa's Charities) 1.1

Law File No. 41 of 1930 | General and Revenue Secretariat

To

11) The Edl. Br. for perusal & return.

ISD 13/1

DPC 13/1

12) Submitted for perusal. The Law section may be requested to send a copy of the order to the Edl. section as soon as it is received.

DCR 16/1/32 EPG 16.1.32.

13) yes CC 16/1

14) Law Section with compts.

EPG 16.1.32.

From.

The Public Prosecutor, Mysore.

No. 807 dated 15.2.32 forwarding copy of the ~~Order~~ order passed by the Dist. Judge, Mysore and pointing out that he is of opinion that ~~H.C.~~ though the order might be construed as an administrative order, still the H.C. has got jurisdiction to revise it.

15) Reference in Para 3-5 Supra. The P.P. is of opinion that the order of the learned Dist. Judge is erroneous. The order was pronounced on 2.1.32. Application for revision of judgment may be filed within 90 days from the date of the decree. Copy of the order is sent for approval. ~~Govt~~ Advocate may perhaps be consulted as to the further action to be taken in the matter.

ISD 16/2

376 ✓ O.S. 4/1879 on the file of the Dist. Judge, Mysore (re: Narasimhappa's Charities) 5

General and Revenue Secretariat | Law File No. 41 of 1930. | [App. F. III—2

Serial No.

G.O.No.P 94931 dated 19th Feb. 1932

16) Forwarded with compliments to the Govt Advocate for favour of opinion as to whether this is a fit case for moving the High Court to revise the order of the Dt Judge

P.O.

18/2/32 For Chief Secy to Govt

GOVT. ADVOCATE'S OFFICE 19 FEB 1932 BANGALORE

Govt No. 676/81-32 dt 19.2.1932

17) Returned with compliments.

G.O.No. 102/81-32 dt 2.3.1932

18) The questions for consideration are:-

(1) Whether the Court has jurisdiction to alter the scheme, and

(2) Whether the pension of Rs.30/- which was, according to the agreement of the parties, directed to be distributed by way of scholarships after it lapsed, can now be distributed as pension to the four persons named in the order. (now three)

That the Court has jurisdiction in the matter is clear from the history of the Institution itself. The matter was taken cognisance of so long ago as 1879, in O.S. 4 of 1879 by the Commissioner of Ashtagram Division who framed a scheme for administering the charities. Ample powers were thereby conferred on the Trustees regarding the management of the Institution. This was confirmed in Appeal Suit No 5 of 1879 by the Judicial Commissioner of Mysore at Bangalore. The Institution which was working on the above lines was not found to be quite efficient and the Trustees agreed to hand over the Institution to Government, whereon an application was made to the District Judge, Mysore, for a variation of the scheme in the light of the change of circumstances subsequent to the previous order of the Court. In 1927

the

NOTE—Contn. Sheet.

the then District Judge varied the scheme as desired by the Trustees. The present District Judge has, - in his order dated the 2nd January 1932 varied the - order of ~~1932~~ 1927 in one respect and has directed the - allotment of the lapsed pension of Rs.30/- among four old members of the staff whose services were dispensed with after the Institution was taken over by Government. In 1927, the District Judge discussed the - competency of the Court to vary the scheme and held that the Court had such powers and varied the scheme as desired by the Trustees. That this is a correct position, though there are some decisions to the contrary, can be gathered from Mulla's Code of Civil Procedure, page 272, where he says "that a scheme framed by the Court may be varied if good cause is shown". Mr. Justice Srinivasa Iyer, in his order remanding the case, in effect, approves of this view as he says that 'any ~~modifiri~~ modification can only be made after hearing - all the parties who were parties to the agreement'.

cf. LEWIN on TRUSTS, Page 598,
CORPUS JURIS, Vol. 11, page 363.
"Alteration of scheme once settled. After a scheme is once settled by a decree in chancery, the Court has power to alter it from time to time as circumstances may require, since the control of administrative functions is entirely distinct from conditions either precedent or subsequent imposed by the founder of the charity. Accordingly every scheme for applying the income of a charity remains in force only until further order or until a new one is established".
38, ENGLISH REPORTS, Chancery, page 356.

To hold otherwise, would lead to further difficulties as the order of 1927 would itself be ultra vires and - invalid.

I am,

Serial No.

20) I am, therefore, of opinion, that the Court is competent to vary the scheme if good cause is shown.

21) If the Court is thus competent to alter the scheme, the next question for consideration is - whether the present order awarding Rs.30/- in - question as pensions to the aforesaid persons is justifiable in any manner. The majority of - the Trustees passed a Resolution on 26th January 1930 recommending the grant of pensions to the persons abovenamed.— That was accepted by the District Judge in his order dated the 1st August 1930. After that order was set aside by the - High Court, the District Judge again ascertained the views of the Trustees and since the majority of Trustees were in favour of distributing this sum of Rs.30/- among the persons concerned, he - approved of the same and altered the scheme in - that respect. In the light of the circumstances discussed by the District Judge, his order seems to me to be just and equitable. The members of the staff were getting pensions as is clear from the Resolutions of the Trustees which granted pensions to various teachers of the school.

22) The four persons concerned had put in over 30 years of service each, when their services were dispensed with by Government and the Bonus sanctioned by Government was very small. The Trustees, therefore, as an act of justice and equity, recommended

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

recommended that these old persons who could not be expected to have a long life before them should be shown some concessions and resolved to pay some small pensions out of the Rs.30/- which were - available. The District Judge has accepted the Resolution of the Board of Trustees and modified the scheme accordingly. This alteration is no - doubt against the terms agreed upon by the parties when the Institution was made over to Government and it might be urged with some force that the - beneficiaries are prejudiced to that extent. But, all the same, I think that the order of the District Judge is correct for the reasons stated above, and the High Court, in its limited jurisdiction on the Revision side, may not ~~therefore~~, interfere with the order in question (c.f. Mulla's Code of Civil Procedure, page 338). I am, therefore, of opinion that a Revision petition is not advisable in the case.

Bangalore,)
2-3-1932.)

S. Venkataramana Iyer
Government Advocate.

(3) Government undertook the management of the Institution subject to certain conditions laid down in G.O. of 14th April 1926 one of which was that when pensions already sanctioned by the Trustees in favour of some of the retired members of the staff lapse, the whole amount should be utilised for scholarships to Lingayat students. In pursuance of this a scheme was passed by the District Judge on 17-1-1927, Clause (d) of para 3 5.

Serial No.

of which adopted this condition. It was practically a scheme passed with consent of parties and it is doubtful if it is legally possible to change such a scheme in one of its conditions, when one of the parties does not consent to such change.

S 24) Again under cl (c) of para 3 of the 1927 scheme, the beneficiaries of the Endowment fund are the Lingayat students. Under cl (d) these beneficiaries get a vested legal right to the amount of pensions then in force as soon as they become no longer payable to the persons then enjoying the same. It is not clear how this legal right can be defeated on grounds of equity and morality, especially against the wishes of the Lingayat Trustees.

P 25) The Pr, Mysore thinks that the order of the District Judge, upholding his previous order of

Q. 1-8-30, is erroneous. Mr. M. Ramachandra Rao, the

R learned Advocate, was of opinion that the order of the Dt Judge passed on 1-8-30 could not be sustained on merits. The present G.A however thinks that the order of the District

B. Judge is correct and that any further revision is not advisable.

26) Submitted for perusal and orders.

Dev Secy

Dy 2/3/32

NOTE—Contn. Sheet.

10

3752

File No. of 193 . | General and Revenue Secretariat

27) I am inclined to agree with the asst. Sec? Law Dept. Kind ref? is invited to portion marked A in Govt. advocate's opinion. That Concession in his argument strengthens the case ~~for~~ as urged by the asst. Sec?.

2nd member) MK 3/3

28) The proposal is may be accepted MK 3/3

by 4/3/32

27) For perusal & return. MK 4/3/32

2d Mbr)

OFFICE OF THE EXECUTIVE COUNCIL 3 MAR 1932 No. 7283

EDUCATION BRANCH 7 MAR. 1932 GEN. & R.V.

30) Submitted for perusal. 8/3

TRb 9/3 BR 9.3.32 31) C: to Secy Ce 11/3

BR 12/3/32 Ce 12/3

The file Ed 93-30, bearing D No. 2565, on the subject is W/S reference TRb 9/3

CHIEF SECRETARY. 11 MAR.

32) Law Section with compts.

BR 12-3-32.

4169/P 31 3001 11

Edn. 133]

Postal Address:—POST-BOX No. 8.
Tel. Address:—EDUCAGEN, Bangalore.

EDUCATION 3. MAR. 1932 GEN. & REV. SECTN.

All replies to communications should be addressed to the Director of Public Instruction and not to any officer by name.
In all communications this office No. in full should be quoted.

DEPARTMENT OF PUBLIC INSTRUCTION.

GOVERNMENT OF MYSORE.

OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION IN MYSORE.

No. D 3 - 2725-148 of 31-32. *Bangalore, dated* 1st March 1932.

ENCL.

2 MAR 1932

CHIEF SECRETARY'S Edn: 3 MAR 1932 3/3

FROM *N.S.Subba Rao, Esq., M.A., Bar-at-Law,*
~~The~~ Director of Public Instruction in Mysore,
Bangalore.

Esh 93-30-31

To

R.Ranga Rao, Esq., B.A., B.L.,
Offg. Chief Secretary to Government,
Bangalore.

Sir,

2545

In continuation of this office letter No. cited above dated 22nd January 1932 requesting to be informed whether Government propose to appeal against the decision of the District Court in upholding the resolution of the Board and granting pensions to retired teachers and servants of the Marimallappa's High School, Mysore, I have the honor to report that the Public Prosecutor, Mysore Division has sent me a bill for Rs. 50/- being the legal remuneration for services rendered in O.S.No.4 of 1879 on the file of the District Judge, Mysore. I request that sanction of Government may be kindly obtained for payment of the said bill out of the office contingency.

I have the honor to be,
Sir,
Your most obedient servant,
N. S. Subba Rao
Director.

CS. 301.

Subd. The question of payment of a sum of Rs 50/- to the Govt. Advocate, being his remuneration in connection with the Revision Petn has been dealt with in the Prot^n Branch. in file Law 41-30

This may perhaps also be transferred to that Branch for disposal.

Subd for orders. 8/3 8.3.32. yes 9/3

Prot^n Br. with compts 8/4 9-3-32

33) The Govt. has been paid a sum of Rs 50/- for services rendered in the Rev. Petn in the file ogne H.C.

Dft of o. sanctioning the present bill is subd for orders.

NOTE—Cont. Sheet

WD 02553—50,000—GPB—8-7 30.

34) Please get the bill

The bill need not be returned to me

PPV: with reference to his letter dt 15/2/32

mr 14/3

ISD 14/3

mr 14/3

12 Remuneration to the PPr. Mysore
Marimallappa's Chetty Case.

File No. of 193 .

General and Revenue Secretariat

2 dfts put up for apptt
ISD
15/3

Issue both
MNP
15/3.

To,

The Director of P. W.

No. P. 5517 dated 16.3.32 Calling for the bill of the PPr. Mysore.

To

The PPr. Mysore

No. P. 5518 d 16.3.32 returning two bills of accts.

Sec A

From,

The Director of Public Instn

No. D3-27ps-139/31-32 dated 8th April 1932 enclosing the bill of the PPr. Mysore.

Dft. G.O. is put up for Comm'n.

Sub? for orders vide reflex to para 33-34 Supra.

ISD
11/4

The fee of Rs 500/- claimed appears to be reasonable & may be passed -

~~A like~~ for arguing the Civil Revn case in the High Court, the G.A. was paid Rs 500/- -

The draft G.O. may be apptd -

Gen Secy

MNP
4/4

13/4

Issue

MNP
14

TYP. GEN'L. & REV. 15 MAR 1932 3.45

GENERAL SECRETARY. 11 APR. 1932 No. 6846

14 APR. 19

4686

App. F. III—2] 13

General and Revenue Secretariat | File No. of 193

Serial No.

To,

The Dir^r of Public Instruction

Computer to furn

copy to Ed^l Br

G.O.no. P. 6006-7 Law 41-30 dated 18.4.32

Sanctioning a fee of Rs 50/- to the PBr. Mysore

for the copies rendered in O.S. 4/1877 on the file

of the Dist. Judge: Mysore (re: Marimallappa's Charities)

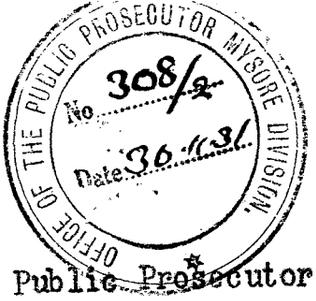
B.

150 21/4/32

21/4

NOTE—Contn. Sheet.

WD 02553—G PB—50,000—8-7-30



1775 J 31
P 631

Office of the Public Prosecutor, Mysore Division.

Jas 9/11

Progress Report for 1930-10-1931.

--

Submitted to the General Secretary to the Government of His Highness the Maharaja of Mysore, Law Section, Bangalore.

District Judge's Court, Mysore.

O. S. 4 of 1879

In re: Guntur Narasappa Chetty's Director of Public Instruction vs. Mr. R. Rao & Others.

Objection Statement filed. Copy enclosed

Mr. R.K. Rao for some members of the Committee

And Mr. M.P. Bhojaiya for the rest.

For arguments. adj'd to 13.11.30

N.B. Some of the retired employees of the Institution also appeared through Counsel. The Judge has called for proceedings of the Committee and a report on the attitude of the Committee as a whole with regard to the order in question

2. Mr N.K. Rao O.S. 13 of 30.31 vs Deputy Commissioner, Mysore

Issues framed. For Evidence adjourned to 15.12.31

O.S. 25 of 28.29.

Bank of Mysore Ltd vs Essenflow Products Ltd

Director of Industries & Commerce. Petitioner

Mr N. Rama Rao, Director of Industries & Commerce

Examined as P.W. 2. Petitioner Closed

The Bank also Closed their Case after filing

their mortgage deed.

Adjourned for arguments to 16.11.31

O.S. 2 of 30.32

A. 7 Filed in the connected file TSD 4/4

Vishakantaiah Chetty, Amildar, Nyasa Division

Plaintiff's Advocate prays for more time to

furnish the particulars called for.

Adjourned to 12.11.31

K Ramachandra

Public Prosecutor

Nyasa Division

IN THE COURT OF THE DISTRICT JUDGE, M Y S O R E.

Original Suit No. 4 of 1879.

In the matter of the late Gurukar Hari Mallappa's Charities.

Petitioner:- The Director of Public Instruction in Mysore, Bangalore.

VS

Opponents:- Mr. J. C. Rollo and others.

(Board of Trustees for the management of Hari Mallappa's Charities)

The Petitioner abovenamed begs to file the following statement of objections.

1. That the resolution of the Board that the sum of Rs.30/- saved to the Institution by the death of one of the old pensioners may be distributed among the four newly retired hands of the School was ultra vires and contrary to the spirit of G. O. No.E.5720-22/Edn dated 14-4-1926.

2. That the conditions and arrangements embodied in the G. O. were accepted by this Hon'ble Court on 17-1-1927 without exception or reservation. But the subsequent order of the Court approving of the said resolution of the Board was beyond the purview of the order previously passed on 17-1-1927.

3. That the sum of Rs.30/- saved to the Institution by the death of the old pensionser ought to be treated as having lapsed to the Fund and absorbed. It could not be ear-marked as saving under the head of income from pensions. In recommending the

the utilization of the said sum of Rs.30/- for pension to the recently retired hands the Board would virtually be appropriating a portion of the Fund intended for " Scholarships " for payment of " pensions ".

4. That on the death of the old pensioner the sum of Rs.30/- ceased to exist as ' pension ' and fell into the residue of the Fund. It is submitted that the Court could not apply the lapsed fund Cy pre's by creating new pensions.

The petitioner therefore prays that this Hon'ble Court ~~may~~ be pleased to review and revoke the order approving of the resolution of the Board, and granting pensions to the four employees retired subsequent to 17-1-1927.

----

5 Mis 246 1931
p 831

OFFICE OF THE PUBLIC PROSECUTOR MYSORE DIVISION. No. 260 Date 10/10/31

Office of the Public Prosecutor, Mysore Division.

GENERAL SECRETARY. 13 OCT. 1931 No. Law

Progress Report for 9-10-1931.

Submitted to the General Secretary to the Government of His Highness the Maharaja of Mysore (Law Section) Bangalore.

District Judge's Court.

O. S. No: 4 of 1879: ?

Re: the late Gurikar Marimallappa's Charities.

Adjourned to 30-10-1931, for objections.

Public Prosecutor.
Mysore Division.

Law 41-30 B 29/9

D.no. 1132

Letter for D.no. 269 sent Bgr 3/10

To

the Education for kindly

pursuing the Law 41-30 sent on 3.10.31.

TSD 27/10.

the calling Law 41-30 etc... to herewith

Asstt

DEB

27/10

For Perusal

Sec. B

TSD 27/10

TSD 27/10

27/10

6

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Date of issue 12/1/32

Signed by M' Ray

List of enclosures .....

Copied by .....

Examined by .....

Section

File No.

Serial No.

No. 3899

To

The PRr. Mysore.

Sir

I am directed to request
~~With reference to~~
~~You do obtain & send at an early date~~
~~your proper report dated 4.1.32~~
a copy of the order
~~intimating that orders~~ passed in
OS. 4/1879 on the file of the
Dist. Court Mysore (~~re~~ (the
late Gurikar Marimallappa's Charities)
upholding the resolution of the
Board and granting pensions to
the retired teachers of the School.
~~I am directed to request that~~
~~a Copy of the order may be~~
~~kindly be obtained and sent~~
~~early for transaction of further~~
I have etc

ISD 11/1 for Ch. Sec

11th January 1932.

N. Madhava Rao, Esq., B.A., B.L.,

The Public Prosecutor,
Mysore.

I am directed to request you to obtain and send at an early date a copy of the order passed in O.S. 4/1879 on the file of the District Court, Mysore, re. (the late Gurikar Marimallappa's Charities) upholding the resolution of the Board and granting pensions to the retired teachers of the school.

I have the honor to be,
Sir,
Your most obedient servant,

Chief Secretary to Government.

TRM.2

8 3112/P 31

GPB

192 .

From

The Public Prosecutor,

Mysore Division,

To Mysore.

The Chief Secretary to the Govt., of His Highness the Maharaja of Mysore, Law Section, Bangalore.

Dated 13-1-32.

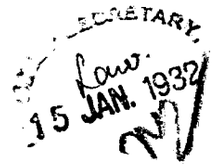
Despatched 13-1-32.

Received

General No. 514

No.

Enclosure No. nil



Sir,

With reference to your letter No.P.3899 Law Dated 11-1-32 asking to be furnished with a copy of the order passed in O. S. 4 of 1879 (Director of Public Instruction Vs Mr. J. C. Rollo and others) on the file of the District Judge, Mysore, I have the honour to state that application for copy of the order has been filed yesterday and the same will be submitted to Government as soon as it is received along with all the connected records.

I have the honour to be,

S i r,

Your most obedient servant.

K Ramadas

Public Prosecutor,

Mysore Division.

3762/31 9
P. 0

GPB

192

From

The Public Prosecutor,

Mysore Division,

To Mysore.

The Chief Secretarty to the

Government of His Highness

the Maharaja of Mysore

Dated 15-2-32. Law Sec. Bangalore.

Despatched 15-2-32.

Received

General No.

No.

607.

Enclosure No. 3.

Sir;

In response to your letter No.P.3899/Law dated 11-1-32, I have the honour to submit under Rule 104 of the Legal Affairs Rules copy of order dated 2-1-32 passed by the District Judge, Mysore, in O. S. 4 of 1879 (In re: Gurukar Marimallappa's Charities) upholding the resolution of the Board of Trustees and granting pensions to certain retired employees of the school.

Two files of records connected with the correspondence on the subject are returned herewith.

Although the order passed by the learned District Judge might be construed as an administrative order I am of opinion that the High

(10)

High Court has got jurisdictinn to revise it. The points for decision are

(1) whether the Board is competent to administer the Trust to the prejudice of the beneficiaries and in contravention of the terms subject to which the Institution was handed over to Government ?

(2) can the teachers and servants of the school be regarded as beneficiaries ?

It is submitted that the answers to both these questions must be in the negative.

The decision of the learned District Judge to the contrary seems to be erroneous.

I have the honour to be,

S i r,

Your most obedient servant.

K Ramadas

Public Prosecutor,

Mysore Division.

THREE ANNAS

ಮೂರು ಆಣೆ ||

MYSORE

CR 5496
P. M. Ramachandra

In the court of the District Judge, Mysore Division.

Mysore, Dated 2nd January 1932.

Present:- K. Shankaranarayana Rao, Esquire, M.A.B.L.
District Judge.

O.S.No.4 of 1879.

-:O R D E R:-

In the matter of the resolution passed by the Board of Trustees on 26-1-1930 for grant of penssions to Messers; M.Rama Rao,K.Sreenivasa Char and R.Madappa, ex-teachers of the Marimallappa's High School.

2. By its order dated 1-8-1930 this court approved of a resolution dated 26-1-1930 passed by the Board of Trustees appointed for the management of the Endowment Fund relating to Marimallappa's High School, for the grant of pensions to the aforesaid three teachers, out of a sum of Rs. 30/- which became available owing to the death of another retired teacher of the school,viz,Mr. M.Puttananjappa.

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

DISTRICT AND SESSIONS COURT * MYSORE DIVISION * CENTRAL RECORDS

THREE ANNAS
ಮೂರು ಆಣೆ
GOVT OF MYSORE

The circumstances under which that order was passed are detailed in that order itself, and it is therefore unnecessary to recapitulate those facts.

3. The Government, represented by the Director of Public Instruction in Mysore, filed Civil Revision Petition No. 178 of 1930-31 before the High Court of Mysore against the aforesaid order and the High Court set aside that order and directed this court to dispose of the matter after notice to Government. Accordingly notices were issued not only to the Government but also to the Board of Trustees and the teachers concerned. The question was argued at length on behalf of all parties including Government and I have also had the advantage of perusing the proceedings of the Board of Trustees as also the correspondence, between them and the Director of Public Instruction, that passed

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

DISTRICT & SESSIONS COURT, MYSORE. CENTRAL RECORDS.

Copy ready on the	Copy delivered on the	Copied by	Examined by
			2

THREE ANNAS
ಮೂರು ಆಣೆ/3
MYSORE

passed both before and after handing over the management of the High School to the Education Department.

4. Mr.K.Ramaswamy appeared on behalf of Government and Mr.Bhogaiah represented Mr.T.S.Siddappa one of the Trustees, while Mr. A.Krishna Rao appeared on behalf of four other trustees,viz, Messers. Lokahitaishi H.Nanjundaxa Rai Urs, H.Narasinga Rao, S.Ranga Char and Mr.Venkatakrishnaiah, and Mr.C.Narasimhaiah for the aforesaid 3 teachers. The two former argued against the grant of pensions while the 2 latter argued in support of it. The main contentions urged by the former may be summarised as follows:-

The Government undertook the management of the High School as per orders No. E. 5720/Edn.10-25-5 dated 14-4-1926 subject to certain express conditions, one of which was that when the pensions already sanctioned by the Trustees in favour of some of the retired members of the staff lapse, the

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
MYSORE
ಮೂರು ಆಣೆ 4

the whole amount should be utilised for scholarships, that this court also adopted this condition in its scheme subsequently framed on 17-1-1927, that it was only after the scheme was so modified that Govermenent undertook the management of the High School and also became in a way the manger of the endowment fund, that in the face of the said Government Order and the terms of the scheme, the Trustees had no power to pass any resolution proposing the payment of any fresh pensions out of the endowment fund, that, similarly, the order of the court approving of that resolution was 'ultra vires' that the said scheme itself cannot be altered except under special circumstances necessitating such a change and except by a suit under Section 92 of the Civil Procedure Code, and that, in any event, the beneficiaries of the fund being Lingayet students, their interests are likely to be highly prejudiced by such grant and that therefore

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆ 15
MYSORE

therefore the order of this Court dated 1-8-1930 was not maintainable.

5. Messers A.Krishna Rao and Narasimhaiyya, on the other hand,argued that it is not necessary that a fresh suit under Section 92 should be filed to make any alterations in the scheme already framed as in the event of such a procedure being considered imperative the order passed on 17-1-1927 by this Court modifying the scheme as it stood previously would itself be ultra vires, that it has always been the practice of this Court to grant such pensions on applications made for that purpose, that though it was no doubt one of the conditions laid down in both the G. Order dated 14-4-1926 and also in the scheme framed by this Court on 17-1-1927, that after the lapse of the pensions already sanctioned the whole amount thus made available should be utilised for the grant of scholarships, such a

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
MYSORE
ಮೂರು ಆಣೆ

a condition did not in any manner affect either directly or indirectly the management of the institution by Government that though the teachers concerned had no legal claim on the charities for any pension their prayer was in accord with similar concessions granted to other teachers who had similarly rendered meritorious services to the institution, that the case of these teachers could not come up for consideration either when the aforesaid Government Order was passed or when the scheme was framed by this Court,. As they were thrown out of employment only in June 1927, when it was that the occasion arose for them to urge their claims for pensions, that their claim is just and that it was recognised as such by the Board of Trustees is clear not only from the resolution of that Board dated 27-9-1928 but also by their subsequent resolution dated 26-1-1930, that the claims of these teachers for pension was more

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆ
GOVT OF MYSORE

more equitable than that of the prospective students who are likely to be benifited by that amount being utilised for scholarships and that, therefore, the aforesaid order dated 1-8-1930 should be restored.

I have examined the question afresh in the light of the arguments advanced by both the parties. Mr.Bhogaiah contended that any modification of the scheme as framed on 17-1-1927 can be made only by means of a regular suit and not in the course of such miscellaneous proceedings, relying on 51 Madras 35, A.I.R.1930 Madras Page 236 and I. L.R. 6 Rangoon 594. But it seems to me that there is no need for filing a separate suit. In the original scheme framed on 10-6-1879, the object of the charity is specified to be the establishment of an Anglo-Varnacular School for the primary education of Sivachar boys, and the Trustees

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆ
GOVT OF MYSORE

Trustees appointed thereunder were authorised to appoint teachers, frame rules etc for the conduct of the school and for transacting all business necessary for giving effect to the object of the charity, subject, of course, to the approval of the Court. It may be observed that that scheme has since then undergone several material modifications, as is clear from the circumstances that the primary school that it then was subsequently became a High School and has since passed into the hands of Government. All these changes were affected, not by suits under Section 92, but by means of representations made to the court, from time to time, by the Board of Trustees themselves or by other parties interested. Two of such orders relate to pensions sanctioned to Mr.M.Venkatakrishnaiah, the retired Head-Master of the School, Mr.Puttananjappa, a teacher, on the recommendations of the Board of Trustees. It is thus evident

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

DISTRICT COURT, MYSORE. CENTRAL RECORDS DIVISION. SESSIONS

THREE ANNAS
ಮೂರು ಆಣೆ
MYSORE

evident that it has always been the practice of this Court to modify the scheme whenever found necessary or to sanction the grant of pensions if and when, in the opinion of the Board of Trustees, to persons desrving such a concession, by means of orders passed in Chambers and not by means of suits. This objection cannot, therefore, prevail.

7. It is no doubt true that when the Government agreed to take over the management of the institution it was understood that the pensions already sanctioned in favour of some of the retired teachers of the school should be paid to them so long as they were payable out of the income derived from the endowment fund and that thereafter the whole amount should be utilised for payment of scholarships. This also finds a place in this Court's proceedings dated 17-1-1927. But it must be remembered that at that time the present question was not raised and could not

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by
			✓

DISTRICT AND SESSIONS COURT, MYSORE CENTRAL RECORD DIVISION

THREE ANNAS
ಮೂರು ಆಣೆ
GOVT OF MYSORE

not also have arisen as it was at that stage expected that the school would be taken over by Government with its then staff including the 3 teachers in question. But for some reason or other the taking over of management was postponed till about 8-6-1927 and their services were also terminated about the same time. It was only then that the question of their pensions arose and they hastened to urge their claims thereto, as can be gathered from the proceedings of the Board dated 30-6-1927 (pages 107 and 108 of the Minutes Book), which show that applications came up before them that their considerations was deferred. The minutes further show that this question was similarly deferred from time to time till they passed the following resolution on 27-9-1928, viz,

"They desire however strongly to recommend that Government may be pleased to extend to these persons because

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆ 1
GOVT OF MYSORE

because of their long and efficient service, the same consideration as regards pension as was shown for example, when the Maharani's High School was taken over by Government. At that meeting were present no less than 7 trustees including the Chairman, Mr.Rollo. That Government also accepted this view of the Board and recognised the services of these teachers is clear from Government Order No.10089-98/Edn.428-27-6 dated Bangalore,1-4-1929 in which they sanctioned the recommendation made by the Director of Public Instruction for the grant of gratuities of Rs.280, 180, 100 to the said three teachers and Rs.77/- to peon Boraiah and directed that these amounts be met out of the savings in the budget of the Education Department for the year 1928-1929. The teachers were not evidently satisfied with mere payment of gratuity and therefore made fresh applications to the Board for the grant of pensions as

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆ
GOVT OF MYSORE

as already recommended as per resolution of the 27th September 1928 and the Board resolved by a majority, on 19-6-1930, that the sum of Rs.30/- which was till then being paid to Mr.Puttananjappa and which became available owing to his death might be distributed amongst the said three teachers and peon Boraiah as follows:-

Mr.Rama Rao	Rs.13-3-0 permensem
Mr Sreenivasa Char	8-7-8 -do-
Mr.Madappa	4-11-4 -do- and
Boraiah	3-10-0.

It is this resolution that was sanctioned by this Court as per proceedings dated 1-8-1930.

8. As already pointed out above, the case of these teachers was not considered either by the Government, when they passed the order dated 14-4-1926, or by this Court, when the scheme was modified on 17-1-1927, and it is not unlikely that it was taken for granted at the time that the services

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

DISTRICT AND SESSIONS COURT, MYSORE DIVISION. CENTRAL RECORDS

THREE ANNAS
ಮೂರು ಆಣೆ
GOVT OF MYSORE

services of these employees would be continued by Government even after they assumed management. But somehow, they were thrown out of employment just when the Government stepped in and it is under these circumstances that the teachers pressed for pensions relying upon the earlier precedents in cases of Messers. Venkatakrishnaiah and Puttananjappa. The Government too saw the justice of their claim and accordingly ordered payment of gratuity instead of pensions.

9. The grant of concessions to the teachers being thus recognised on all hands, the only question that now remains for consideration is whether the order already passed by Government on 1-4-1929 is adequate or whether the resolution of the Board dated 26-1-1930 should be given effect to. The most important objection urged against the latter course is that the terms of the modified scheme dated 17-1-1927, which are also found in the Government order relating to the

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆ
GOVT OF MYSORE

the assumption of management of the institution, are inconsistent with the grant of pensions. But as pointed out above this question was not then before either Government or this Court and only arose at a later stage. Now that it has come up, there is no reason why it should not be considered in view of the circumstances referred to above. It may also be observed in this connection that the payment of pensions does not entail any additional burden on the finances of the Education Department. Besides, even under the Government Order and the scheme the management of the endowment fund did not vest in Government but is to continue in the hands of Trustees to be newly appointed by this Court. Indeed the terms of both the Government Order and the scheme dated 17-1-27 may be classified under 2 heads. viz (1) those relating to the transfer of management of the school and (2) those that deal with the management of the endowment fund and these

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆಗಳು
GOVT OF MYSORE

these & do not appear to be interdependent, and the Government have no direct control over the latter. That being so, there was nothing to prevent the Trustees from making recommendations for suitable recognition of the loyal and useful services of these servants of the School and for seeking the sanction of the Court therefor. There is nothing also to prevent this court from sanctioning such a recommendation provided it is satisfied that it is just and equitable, though this technically involves a corresponding modification of the scheme as adopted on 17-1-1927. It must be admitted that the sanctioning of this resolution throws a financial burden on the limited income of the endowment fund as it thereby deprives some Lingayet students from getting some additional scholarships to the extent of the said sum of Rs.30/-. But it seems to me that these teachers of the institution who have loyally served the school in training up a large number

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆ
MYSORE

number of past students for long periods have a moral, if though not a legal, claim for being dealt with in the same manner as previous teachers of the institution like Messers. Venkatakrishaiah and Puttananjappa. The claims of the former cannot in my opinion, be put on a footing different from that of the latter, merely because a change had come over owing to the taking over of the management of the institution by Government, in the interval. Moreover, it is only out of the sum of Ruppes 30/- which was already being disbursed month after month by the Board out of its income, that these pensions are proposed to be paid out and as such the beneficiaries are not in a worse position than they have been since the grant of pensions to Mr.Puttananjappa. These are also admittedly the last batch of the old employees of the School deserving such relief, out of whom peon Bora has since died.

10. As I

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆ
MYSORE

10. As I found that there was a change of attitude on the part of the members of the Board as regards the payment of pensions subsequent to the order passed by this Court on 1-8-1930 and wished to know their present views on this question, I wrote to the President of the Board on 31-10-1931 requesting him to let me know what their present inclinations were and he replied on 23-11-1931 to the effect that excluding himself the Board was equally divided, five Lingayet members being against the grant of pensions and the remaining five non-lingayets being in favour of the grant. Mr.Rollo himself is in favour of the grant for he states in his letter as follows:-

" I consider that in itself the small award from a sum made available by the ceasing of a pension is reasonable and I support it if the award is legal and if the recommendation of the Trustees was made legally." It is thus

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
ಮೂರು ಆಣೆ
MYSORE

thus evident that even now the majority favour the grant of pensions.

11. On the whole I see no reason why the recommendation of the Board dated 26-1-1930, which is only a reaffirmation on a smaller scale, of their earlier unanimous resolution dated 27-9-1928 should not be sanctioned. It is always open to this Court to accept such recommendations of the Board as may be found just and equitable and more particularly when they are in consonance with previous practice. I therefore treat this as a special case and accord sanction to the resolution of the Board dated 26-1-1930 for payment of the several amounts mentioned therein as pensions as from that date. This necessarily means a slight modification of the scheme dated 17-1-1927 and this is hereby permitted.

12. By their order dated 1-4-1929 Government were pleased to magnanimously sanction that a sum of Rs.637/-be paid

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
MYSORE
ಮೂರು ಆಣೆ

paid out of the funds of the Education Department to the said three teachers and peon Boraiah, as gratuity. Should this sum be made available it could be paid in adjustment of the arrears of pension payable according to the said resolution. Such a course will materially reduce the financial burden cast on the fund by the prsent order. This is, however, a matter which rests entirely with Government.

Sd/-K. Shnakaranarayana Rao.

District Judge.

Pronounced in open court

Id/-K.S.N. 4/1/1932.

"True Copy

By Order

Head Record Keeper.

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

Appendix `G—1]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

Diary No. of letter replied to .....

NO. 5577

To The Director of P. I.

Sir,

General and Revenue Secretariat

( )

the *193* .

With reference to your letter no. D3-2725-148/31-32 dated

Date of issue 16/3/32 2nd March 1932 soliciting sanction of Govt. for the payment of the bill for Rs 50/- of the Pr. Mysore being his remuneration for professional services rendered in O.S. 4/1929 on the file of the Dist. Judge, Mysore (re) Munisallappa's Charities, I am directed to request that the bill in question may kindly be sent for reference - approval of Govt.

Signed by .....

List of enclosures .....

Copied by .....

I have etc

for Gen Secy

Examined by .....

WD 71—GBPM—40,000—20-7-31.

32

Appendix F G—1]

SUBJECT .....

.....

.....

Section 4

File No.

Serial No.

Diary No. of letter replied to .....

No. 5378 Records

To The PPr. Mysore.

Sir

I am directed to return herewith the two files of records relating to OS. 4/1879 on the file of the Dist Judge Mysore (re: Marimallappa's Charities) sent with your letter No 607 dated 15.2.32. ~~and to state that Govt are not inclined to prefer an appeal against the order of the Dist. Judge~~

I have etc

BVP 15/3 for Gen^l Sec^y

15/3

General and Revenue Secretariat

( )

the 103

Date of issue 16/3/32

Signed by .....

List of enclosures .....

Copied by 15/3

Examined by .....

Law Section 35 886 31

Edn. 133]

Postal Address:—POST BOX No. 8,
Tel. Address:—EDUCAGENT, Bangalore.

All replies to communications should be addressed to the Director of Public Instruction and not to any officer by name.
In all communications this office No. in full should be quoted.

DEPARTMENT OF PUBLIC INSTRUCTION

GOVERNMENT OF MYSORE.

DIRECTOR OF PUBLIC INSTRUCTION 9 APR. 1932 GEN. & REV. SECTT.

OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION IN MYSORE,

No. D 3 - 2725-139 of 31-32. Bangalore, dated 5th April 1932

APR. 1932

ENCL. One bill.

Law 41-30-5

GENERAL SECRETARY 8 APR. 1932 No. Gen.

FROM N.S.Subba Rao, Esq., M.A., Bar-at-Law,
~~The~~ Director of Public Instruction in Mysore,
Bangalore.

To

H.V.Ramaswamy, Esq., M.A., B.L.,
Offg. General Secretary to Government,
Bangalore.

Sir,

I have the honor to submit herewith the bills for Rs. 50/- of the Public Prosecutor, Mysore being his remuneration for professional services rendered in O.S. 4/1879 on the file of the District Judge, Mysore, as called for in your letter No.P. 5517/Law dated 16th March 1932.

I have the honor to be,
Sir,
Your most obedient servant,
N.S. Subba Rao
Director.

CS. 5/4.

34

G.R.S. App. F VI—G 2]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

Section Law

File No. 41-30.

Serial No. 16

General and Revenue Secretariat

( )

the *193*

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue 18/4/1932 *Read*—

Signed by M. Ray

Letter no. D3-2725-48 of 31-32 dated 1st March 1932 from the Director of Public Instruction in Mysore forwarding a bill for Rs. 50/- of the Public Prosecutor Mysore being his remuneration for Professional Services rendered in O.S. 4/1879 on the file of the Dist. Judge, Mysore (re: Narimallappa's Charities) Soliciting Sanction of Govt. for payment of the same out of his office Contingency

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

~~Order thereon.—No.~~

order:— Rs 600-7(1)

Sanctioned

HVN

BDV 11/4

General Sec

BD 11/4

To.

The Dir of P. Inst

Compt to Govt.

Copy to Edn. Br

W40
35

Proceedings of the Government of His Highness
the Maharaja of Mysore.

R e a d :-

Letter No.D 3-2725-148 of 31-32 dated 1st March 1932 from the Director of Public Instruction in Mysore, forwarding a bill for Rs.50/- of the Public Prosecutor, Mysore being his -- remuneration for professional services rendered in O.S.4/1879 on the file of the District Judge, Mysore (re: Marimallappa's charities) and soliciting sanction of Government for payment of the same out of his office contingency.

Order No. Book-7 ---/Law 40-30-6

Dated, Bangalore, the, 18th April 1932.

S A N C T I O N E D.

M Nyrakar

For General Secretary to Govt.

ISD

To

The Director of Public Instruction in Mysore.
with the bill.
The Comptroller to Government.

MK.4.